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Supreme Court, U.S.
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IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1997

BRAHIM ARRIEH--- PETITIONER

VS.

CITY OF MILWAUKEE ---RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CIRCUIT COURT OF APPEALS OF THE STATE
OF WISCONSIN

PETITION FOR WRIT OF CERTIORARI

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16 pp

QUESTIONS PRESENTED

Petitioner received due notice and a hearing under the Fifth Amendment of the United States of Constitution on the closing and sale of his property, but the City of Milwaukee failed to give him due notice of the specific controlled drug buys that they conducted on his property.

1. Did the failure of the City of Milwaukee to give the Petitioner specific information of controlled drug buys that they conducted, so that he could take appropiate measures to abate the drug nuisance, violate the due process provision of the Fifth Amendment of the United States Constitution ? Answer: Yes.

The trial court ordered the closing and sale of the Petitioner's property, valued at $136,500., his residence for over 60 years, who abated the only drug incident he learned about, for allegedly failing to abate other drug incidents about which he knew nothing.

2. Was the taking of the Petitioners property a violation of the "excessive fines" clause of the Fifth Amendment to the United States Constitution? Answer: Yes.

LIST OF PARTIES

All parties appear inthe caption of the case on the cover page.

TABLE OF CONTENTS

OPINIONS BELOW.....1

JURISDICTION.....2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....3

STATEMENT OF THE CASE.....4

ARGUMENTS..... 9

REASONS FOR GRANTING THE WRIT.....11

CONCLUSION.....11

INDEX TO APPENDIX

APPENDIX A Decision of the State Court of Appeals

APPENDIX B Decision of the Supreme Court Denying Review

APPENDIX C Decision of the State Court

APPENDIX D Decision of the State Court of Appeals

APPENDIX E Decision of the Trial Court

APPENDIX F Decision of the Court of Appeals

APPENDIX G Decision of the Trial Court

TABLE OF AUTHORITIES CITED

CASES

Alexander v. United States, 113 S. Ct. 2766, 125 L.ED.2d at 455 (1993).

Austin v. United States, 113, S. Ct. 2801, 125 L.ED.2d at 497 (1993).

United States v. Real Property, 845 F. Supp. 725 (C.D.Cal.1994).

STATUTES

Wisconsin Statutes Section 823.113

Wisconsin Statutes Section 823.114

Wisconsin Statutes Section 823.115

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **state courts:**

The opinion of the Court of Appeals appears at Appendix A to the petition and is

[x] reported at Wis. Ct. Appeals, No. 960482 (1997) ; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **state courts:**

The date on which the highest state court decided my case was October 31, 1995. A copy of that decision appears at Appendix A.

[x] A timely petition for review was therafter denied on the following date: September 18,1997, and a copy of the order denying review appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION

AMENDMENT ARTICLE V

No person shall... be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use without just compenstation.

AMENDMENT ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed and unusual punishment inflicted.

STATEMENT OF THE CASE

This case is an appeal by writ of certioraru from the decision of the Circuit Court of Appeals District 1 of the State of Wisconsin that the "excessive fines" clause of the Eighth Amendment of the U.S. Constitution did not apply to the present case, a nuisance abatement action.

In June, 1990, the petitioner, Brahim Arrieh, lived at 620 North 26th Street, Milwaukee, Wisconsin, a 12-Unit apartment building that he owned. He was born there in 1930, became the owner of the building in 1977 when he inherited his share of the property from his father and bought the remaining shares in the property from relatives (R. 33:13).

Under the new WDHAL on June 6, 1990, the Milwaukee Police department conducted its first controlled buy of drugs at Arrieh's apartment building. (R. 32:1).[1] The buy was made by a confidential informant. No arrest was made and Arrieh was not notified of this transaction.

On July 16, 1990 the Police Department served Arrieh with a letter notifying him of unspecified drug activity in his apartment building. The letter provided no notice of the type of drug activity alleged or which tenant or apartment unit was. involved (R.32:2). On the following day Arrieh went to the Police Department to get information about the drug activity referred to in the letter. He was referred to a written police report that contained no additional specific information. (R. 33:19-20). According to Milwaukee Police Detective Glen Zirgibel, on that sameday he received a phone call from Arrieh and

informed him only that there was a drug problem in Apartment 1, and that police would be monitoring the situation and if there were further problems he would hear from him again. (R. 35:55). Detective Zirgibel never contacted Arrieh again to advise that there were any further problems besides the tenant in Apartment 1

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[1] Record item number 32 is an envelope containing all trial exhibits. References in this statement are to the trial exhibit number of the documents contained in item 32 of the appellate record.

On July 18, 1990 the police conducted a second controlled buy at Arrieh's apartment building, again using a confidential informer. (R. 32:4) No arrest was made and no report was made to Arrieh. On July 22, 1990, police conducted a third controlled buy, again using a confidential informer. No arrest was made, and again, no one contacted Arrieh.

On July 23, 1990 Arrieh received a second letter, notifying him of unspecified drug activity in his apartment building. (R. 32:7). No specific details were provided to permit him to identify the guilty tenant or to enable him to begin on eviction proceedings against any specific tenant. There was no follow up call from Detective Zirgibel to provide any further details as to where the problem continued.

Instead, the following day police executed a search warrant for Apartment 1, found no drugs, but seized drug paraphernalia. (R. 33:48-51: R.32:8). No one informed Arrieh of the search and, contrary to the assertion in the City's brief, at p.23, the occupant, William Wells was not arrested. (See, R. 32;8, indicating "no case" resulted from the search).

In late August, 1990, a neighbor reported to Arrieh that he observed greater that usual activity of persons entering and leaving Apartment 1, occupied by William Wells. On August 25, 1990, Arrieh gave a written notice to Mr. Wells to vacate the apartment for maintaining a nuisance by permitting a large number of people to enter leave his apartment. However, the activity quited down and there were no further complaints from neighbors, so Arrieh, lacking any knowledge of the earlier police contact with Wells, abandoned his effort to evict the tenant. (R.33:88).

On August 28, 1990 police arrested tenant Edgar Watson when he was observed outside Arrieh's building apparently involved in drug activity. When approached by police he ran into the building and was there after arrested (R.32:14). The police did not report the arrest to Arrieh, who personally had no knowledge of Watson's drug activity.

On September 4 and 5, 1990 police made two more secret controlled buys from Apartment 4 at Arrieh's apartment building, again using a confidential informer. (R. 32:17-18). Once again, no arrest was made and no one informed him that the problem now appeared to have switched from Apartment 1 to Apartment 4.

On October 26, 1990 the Police Department executed a search warrant and finally arrested tenant William Wells in Apartment 1 for drug activity. (R. 32 :23). Again, the police did not report the arrest to Arrieh, but he made his own inquiry and learned that the tenant had been arrested for drug activity. On November 5, 1990 Arrieh gave a 10 day written notice to the tenant to vacate his apartment for maintaining a nuisance and about November 17, 1990 the tenant vacated the apartment. (R. 33:89).[2]

On November 19, 1990 Arrieh sold the building on a land contract for $136,500.00, at which nine apartments were rented and applications for the two vacant apartements were given to the buyer. During the summer $40,000 had been spent in renovating the building and it was in good condition at the time of the sale.

On November 27, 1990 Arrieh was served with the summons and complaint in this case. (R. 1). He was not in control of the apartment building at that time (R. 33 :92-93). In April, 1991 the land contract vendee defaulted, and on May 1, 1991, when Arrieh regained possession, there were only two tenants left in the building (excluding the caretaker). (R. 33:91) . Several apartments had been had been extensively damaged by tenants evicted by the land contract vendee, and the damage was repaired during the next several months at the cost $12,000.00.

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[2] The law did not at that time provide landlords with specific authority to evict a tenant upon suspicion of drug activity, but fortunately, Wells did not contest Arrieh's efforts. Section 704.17(1)(a), Wis. Stats., enacted four years later, now provides landlords with such authority.

From May 1, 1991, when he regained control of the apartment building, until the bench trial of this case on August 23, 1991, police secretly made six more drug buys using confidential police informers. (R. 32:38, 39, 40, 41, 42, 43). Arrieh testified that he never observed any of the drug buys, and he was never made aware of them by police as had been promised by Detective Zirgibel the prior summer. (R.33:40, 149, 151).

The police sought no search warrants and made no arrests as a result of the six controlled buys during the four months preceding the trial. Three of the six buys in the Summer of 1991 occurred within the three week period immediately preceding the trial of this case. Since no arrests or search warrants resulted from any of these controlled buys were made for the sole reason of strengthening the City's case that the building was a nuisance.[3] Meanwhile, as the nuisance trial in this case proceeded, the offending perpetrators were permitted to continue their illegal drug trade uninhibited by further police action.

Following the bench trial, Judge Wasielewski found the building to be a nuisance under sec. 823.113. He ordered it closed and sold, with proceeds distributed pursuant to sec. 823.114 and 823.115. The property has been closed and placarded since September 15, 1991.

Arrieh, and his father before him, have occupied and paid taxes on the property since 1927, about 70 years. He was born in the property in 1930 still lives in

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[3] See also, R. 34:76-78, 81, in which Detective Zirgibel testified that his job in arranging these controlled buys was simply to monitor drug activity in the building. He admitted that after acquiring knowledge of drug activity in the building during the trial by the very same William Wells previously arrested by police and evicted by Arrieh, he did not notify any superiors in the police department or contact the probation department to determine if the known suspects were in violating probation by engaging in illegal activity. The only action he would take was to enter the controlled buy in a Vice Control day book which contained all drug activity city-wide.

his property alone, pending the outcome of his litigation. Since the trial court ordered closure of the property over 6 years ago, he has been deprived of any rental income, at a loss approaching $240,000.00. He continues to pay taxes of approximately $4,000.00 a year to the City of Milwaukee.

After the judgment was entered in this case in the Trial Court, the defendant Arrieh filed a timely appeal to the Wisconsin Court of appeals. Subsequently, Arrieh filed a motion in the Trial Court to reopen the judgment to raise the question of the Constitutionality of the new drug house law. Thereafter the Court of Appeals granted a stay of its proceedings, pending the hearing of Arrieh's motion. After the hearing on Arrieh's motion, with the decision that was adverse to him, the appeal to the Court of Appeal's was resumed.

ARGUMENT

I- THE FAILURE OF THE CITY OF MILWAUKEE TO GIVE ARRIEH PROPER NOTICE OF THE CONTROLLED DRUG BUYS IS A VIOLATION OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The City of Milwaukee contended that due notice and a hearing was given on his alledged violation of the Wisconsin Drug House Law (WHDAL) Wis.Sts.113, that resulted in the order for the closing and sale of his property. Wis. Sts. 114.

Under WDHAL Arrieh was requested to abatement the nuisance of drug activity in his property. He did abate the one instance of drug activity that he learned about. He did not abate later drug activity since he neither observed nor was he informed about them, although City of Milwaukee Detective Zirgibel promised that he would notify Arrieh if any further drug activity occurred. No further notification was ever received from him by Arrieh.

Arrieh demonstrated that he was ready, willing and able to abate any drug activity on his property, by first notifying the suspected tenant in apartment 1 on the mere suspiscion that he was engaged in drug activity, to cease greater than usual number of persons frequenting his apartment, and by later actually evicting him upon learning of his arrest for drug activity.

Arrieh was ready, willing and able to evict any other tenant for drug activity, if and when he either observed such activity or he learned about it from any authority or any other source, which he did not.

Being concerned about possible drug activity, he took several measures to guard against such activity by beginning the installation of a new security system, keeping the front and rear doors securely locked and placing dead bolt locks on all apartment doors.

There is no question that Arrieh would have evicted any tenant upon notification by the police identifying the one engaged in drug activity. Perversely, the police, conducted several drug buys in Arrieh's apartment building, and kept them a secret from him.

Nor was it unrealistic that Arrieh, did not observe or learn of the drug activity himself since it was always in secret and very sporadic.

Arrieh should not be subject to the loss of his property, his home for 60 years, under the circumstances detailed above in this case.

II- THE DECISIONS FOR THE FORFEITURE OF ARRIEH 'S PROPERTY UNDER WDHAL IS A VIOLATION OF THE "EXCESSIVE FINES" PROVISION OF THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

In the decision of the first Court of Appeals case the three judges concurred that the taking of Arrieh's property under WDHAL was subject to the "excessive fines" provision of the Eighth Amendment of the United States Constitution and remanded the case to the Trial Court to determine and apply in "excessive fines" test. Alexander v. United States, 113 S. Ct. 2766, 125 L.ED.2d at 455 (1993) whether "in cash or in kind." Austin v. United States, 113 S.Ct. 2801, 125 L.Ed.2d at 497 (1993).

On remand the Trial Court selected a test from United States v. Real Property at 6625 Zumeriz Drive, 845 F. Supp. 725 (C.D.Cal.1994), and decided that the taking of the Arrieh property was an "excessive fine", and it ordered the closure and sale order of the initial Trial Court rescinded.

The City of Milwaukee appealed this decision and the Court of Appeals reversed it. The principal reason, given by the Court of Appeals, was that the "excessive fines" clause of the Eighth Amendment did not apply to a forfeiture in a drug nuisance case. This is directly contrary to the decision this same Court of Appeals reached the first time it heard this case on appeal. The court took the view that WDHAL was solely a remedial law and did not involve

punishment. This again is directly contrary to its earlier decision where it ruled that the Austin case applied and remanded the case to the Trial Court for its determination.

REASONS FOR GRANTING THE PETITION

1. The second Wisconsin Court of Appeals decision is in conflict with the first Wisconsin Court of Appeals decision regarding the applicability of the "excessive fines" clause of the Eighth Amendment to the United States Constitution.

2. The second Wisconsin Court of Appeals decision is in conflict with the United States Supreme Court decision in Austin v. United States 113 S. Ct, 2801(1993).

3. There is an important question of federal law that has not been, but should be settled by this Court, whether the new drug house statutes, such as Wisconsin Drug House Law are constitutional sound.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: December 15, 1997